expressed, and at the same time expressed in an equivocal form, and only then. This conception, as I said before, is not that of using it evidentially,— all that sort of thing is more modern; it is the conception of letting the mere thought and purpose of the writer have an operation, by their own force, to cure and put life into an uncertain document, a thing never to be done, he means, when the uncertainty is in the very texture of the document itself; only to be done when the ambiguity is latent, and even then, only when it has the character of equivocation.

Two more things should be noticed: (1) What Bacon means by averment, an expression which generally and properly relates to pleading, may be seen by turning to the second paragraph of his Maxim 6, and recalling the ancient doctrine which survives and is familiar to us to-day, that a sheriff's return of having served a writ is conclusive. Bacon says: "As if the Sheriffe make a false returne that I am summoned, whereby I lose my land; yet because of the inconvenience of drawing all things to incertainty and delay, if the Sheriffe's returne should not bee credited, I am excluded of my averment against it, and am put to mine action of deceit against the Sheriffe and Summoners." The conception is not that of excluding a certain sort of evidence, but of excluding a certain ground of defence. (2) The second thing is an emphatic repetition and reminder that Bacon's maxim cannot be read alone; it must be illustrated by his commentary. For near the end of his preface to the "Maxims"—that admirable bit of discourse which begins with the famous remark, "I hold every man a debtor to his profession," etc. — Bacon has warned all who resort to his maxims in the clearest manner against this common and almost universal error in the use of them: "Lastly," he says, "there is one point above all the rest I accompt the most materiale for making these reasons indeed profitable and instructing, which is, that they be not set downe alone, like short darke Oracles, which every man will be content still to allow to bee true, but in the meane time they give little light or direction; but I have attended them (a matter not practised, no not in the civill law to any purpose; and for want whereof indeed the rules are but as proverbs, and many times plaine fallacies) with a cleere and perspicuous exposition, breaking them into cases, and opening them with distinctions, and sometimes shewing the reasons above whereupon they depend, and the affinity they have with other rules."

RECENT CASES.

[These cases are selected from the current English and American decisions not yet regularly reported, for the purpose of giving the latest and most progressive work of the courts. No pains are spared in selecting *all* the cases, comparatively few in number, which disclose the general progress and tendencies of the law. When such cases are particularly suggestive, comments and references are added, if practicable.]

ADMIRALTY — JURISDICTION — COLLISION — RAFTS. — Rev. Sts. U. S. § 3, defines "vessel" as including every "description of water-craft, or other artificial contrivance used, or capable of being used, as a means of transportation by water." *Held*, that a raft made of cross-ties, used as a convenient mode of bringing them to market, manned by a pilot and crew, who lived and had shelter thereon during a voyage of many days, propelled by the tides and by poles and large oars, was a vessel, so as to give jurisdiction to admiralty of a libel *in rem* against it for a collision on navigable waters. *Seabrook* v. *Raft of Railroad Cross-ties*, 40 Fed. Rep. 596 (S. C.).

AGENCY — BONDS — RATIFICATION.— An agent, having no authority in writing under seal, gave a bond on behalf of his principals, who were partners. *Held*, the act of the agent could be ratified by parol, and this ratification may be shown by facts and circumstances. *Palmer* v. *Seligman et al.*, 43 N. W. Rep. 974 (Mich.).

CONFLICT OF LAWS— CARRIERS.— The plaintiff made a contract of transportation with the defendant, which released the latter from liability for negligence. The contract was made in New York. It was valid under New York law, but void in Pennsylvania, where the case came up. *Held*, that a contract is governed by the law of the place where it is made, and that the New York rule should apply. *Forepaugh* v. *Del. L. & W. Railway Co.*, 18 Atl. Rep. 503 (Penn.).

The doubt in this case arose from a rule the U. S. courts laid down in *Swift* v. *Tyson*, 16 Peters, 1. A distinction is there drawn between statute and local law and a so-called commercial law. The first class, it is said, is peculiar to each State, and a decision of a State court is binding authority as to what the law is in that State. But the commercial law is uniform throughout the country, and it is competent for a U. S. court to decide questions *contra* to State decisions. This is followed in a late case. *Liverpool Steam Co.* v. *Phenix Ins. Co.*, 129 U. S. 397.

In *Forepaugh* v. *D. L. & W.* it was claimed that the law governing the contract was part of the commercial law, and that it was as competent for a Pennsylvania court to decide it as for a New York court. But the judge rejected the doctrine of a separate commercial law, severely criticising *Swift* v. *Tyson*. He cites a mass of authority on the point of conflict of laws entirely inconsistent with the distinction of the U. S. court. 2 Kent, Com. 458; Story, Conflict of Laws, § 38.

CONSTITUTIONAL LAW — LIBERTY — POLICE POWER. — Owners of factories and mines were prohibited by statute from paying their employees in orders on the stores of the company, and from selling goods from the stores to their employees at a greater profit than they obtained from strangers. *Held*, the statute was opposed to the Fourteenth Amendment of the United States and to the "life, liberty, and property" clause in the Bill of Rights of the Constitution of West Virginia, and could not be supported as an exercise of the police power. The court lay great stress on the fact that it does not apply to all employers, and is therefore class legislation. *State* v. *Goodwill*, 10 S. E. Rep. 285 (W. Va.); *State* v. *Fire Creek Coal & Coke Co.*, 10 S. E. Rep. 288 (W. Va.).

In Pennsylvania a similar statute was curtly declared "utterly unconstitutional and void." *Godcharles* v. *Wigeman*, 113 Pa. St. 431.

CONTRACTS — UNCONSCIONABLE CONTRACTS — MEASURE OF DAMAGES. — Plaintiff had contracted with the government to furnish "shucks" at sixty cents per pound. It appeared that shucks were worth only from twelve to thirty-five dollars per ton at the time of the contract; that it was customary to buy them by the hundred weight; and that the error occurred from a failure to strike out the words "pounds" on the printed form on which plaintiff's proposal was made, and to insert "hundred weight" instead, though plaintiff insists that there was no mistake on his part in making the bid. The "shucks" had been delivered to the government and used by it before the error was discovered. *Held*, that the contract could not be enforced, and that the plaintiff, though declaring on the special contract, could recover the market value only of the "shucks." *Hume* v. *United States*, 10 Sup. Ct. Rep. 134.

The court relies upon the two well-known cases of unreasonable contracts, *James* v. *Morgan*, 1 Lev. 111, and *Thornborough* v. *Whiteacre*, 2 Ld. Raym. 1164, and holds that when the contract is so extortionate and unconscionable on its face as to raise a presumption of fraud, that defence is available at law as well as by an application for affirmative relief in equity. And if performance has been accepted in ignorance and under circumstances excusing the non-return of articles furnished, and these have some value, the amount sued for may be reduced to that value.

CORPORATIONS—"TRUSTS."— A corporation was formed to manufacture and sell gas, and to purchase and hold or sell the capital stock of any gas company in Chicago, or elsewhere in Illinois. It was formed under the general incorporation law of the State, which permits corporations to "own . . . so much real and personal estate as shall be necessary for the transaction of their business, . . . and to . . . exercise powers necessary to carry into

effect the object for which they may be formed." *Held*, the main purpose of this company being to manufacture and sell gas, the purchase of stock in other companies is not necessary to carry this purpose into effect, and the general statute for incorporation not only does not expressly authorize such purchase, but impliedly forbids it. The charter is void as to all powers granted beyond the provisions of the statute.

Held, further, that the object of a corporation formed to "purchase, etc., shares of other gas companies, etc.," is not a "lawful purpose," because it tends to create a monopoly, and so it is not authorized under a statute providing for the formation of corporations for any "lawful purposes." *People ex rel. Peabody* v. *Chicago Gas Trust Co.*, 22 N. E. Rep. 798 (Ill.).

A note to this case collects the principal decisions on "trusts" recently made in this country, to which note may be added *Richardson* v. *Buhl et al.*, 43 N. W. Rep. 1102 (Mich.).

EQUITY JURISDICTION — NUISANCE — REASONABLE USE. — The defendants, keeping a hotel in London, had put up a stove, the heat of which rendered the cellar of the adjoining house unfit for storing wine. *Held*, that though the defendants were acting reasonably in the use of their house, yet as they caused serious annoyance and injury to the plaintiff, the court would interfere by injunction to protect the plaintiff, the jurisdiction of the court not depending upon the question of reasonable use. *Reinhardt* v. *Mentasti*, 42 Ch. D. 685 (Eng.).

EVIDENCE — PROCEEDINGS BEFORE MASTERS IN CHANCERY. —A bill for discovery and accounts was referred to a master. The accounts were complicated, and peculiarly within the knowledge of the defendant. Defendant refused assistance to the master, and produced only those books that he was compelled by order of court to produce. He now seeks to set aside the report by introducing books of which the master and parties to the suit had no knowledge. *Held*, that it was his duty to lay the books before the master, and, having neglected so to do, he could not now impeach the report. *Appeal of Ahl*, 18 Atl. Rep. 471 (Penn.).

GENERAL AVERAGE — JETTISON — RIGHT TO CONTRIBUTION.— A ship was stranded through the negligence of her master, and was thereby placed in a position of such danger as to make it necessary to jettison part of the cargo in order to save the remainder and the ship. *Held*, that innocent owners of the jettisoned cargo are entitled to general average, while the owners of the ship would not be, unless their ordinary relations to the shippers had been varied by contract. The right of contribution in respect of jettisoned cargo is based on the danger to ship and cargo requiring sacrifice to which all must contribute. Such right does not belong to the wrong-doers whose acts have led to the jettison, or to those who are legally responsible for them. *Strang, Steel & Co.* v. *A. Scott & Co.*, 14 App. Cas. 601 (Privy Council).

The Privy Council here denies the correctness of the rule as stated in 1 Parsons on Shipping, 211, and in 2 Parsons on Marine Insurance, 285, which they consider not supported by the cases there cited. The fact that the loser has his remedy against the master for his negligence does not oust the right to general average. This right exists whenever the goods of some of the shippers have been advisedly sacrificed, and the property of the others has been thereby preserved.

INSURANCE—CONDITIONS OF POLICY.—A policy of insurance, stipulating that it should be void in case the assured was not the sole and unconditional owner in fee simple of the land on which the insured building stood, is valid, though the assured has but an equitable interest, being in possession under a contract of purchase from the owner in fee. *Dupreau* v. *Hibernia Ins. Co.*, 43 N W. Rep. 585 (Mich.).

MANDAMUS—COMPELLING R. R. CO. TO FURNISH STATIONS.—A mandamus will be granted to compel a railroad company to establish a station at a town containing 1,800 inhabitants, which desires to send freight and passengers over defendant's line, and at present is three miles from any station. Railroad companies have a broad discretion in locating their stations, but this discretion must be exercised in good faith, and with a due regard to the necessities and convenience of the public. *People* v. *Chicago & A. R. Co.*, 22 N. E. Rep. 857 (Ill.).

PARTNERSHIP — WHO ARE PARTNERS?—Defendants agreed with a third person that they would indorse his notes for a certain amount, to be used in carrying on a store. Defendants were to have an interest in the goods in the

store to the amount of their indorsement, and a share of the net profits, and if the venture proved a loss, a sufficient amount of goods were to be turned over to them to secure them on their indorsement. *Held*, the defendants, having a proprietary interest in the business and its profits, were liable as partners. *McGovern et al.* v. *Mattison et al.*, 22 N. E. Rep. 398 (N. Y.).

SALES.—"As against third parties, a vendor of personal property must take actual possession, and such possession must be open, notorious, and unequivocal, such as to apprise those accustomed to deal with the vendor that the goods have changed hands." *Herr* v. *Denver Milling Co.*, 22 Pac. Rep. 770 (Col.).

STATUTE OF LIMITATIONS — NUISANCE.—Where a railroad company constructs its road-bed so that at times an overflow of adjoining lands is caused, there may be as many recoveries as there are successive injuries, and the statute of limitations begins to run on the happening of the particular overflowing of which complaint is made. *St Louis, I. M. & S. Ry. Co.* v *Biggs*, 12 S. W. Rep. 331 (Ark.).

TRUSTS—INVESTMENT OF TRUST FUNDS.—A trustee, having no directions as to the mode of investing trust funds, cannot invest them in personal securities. *Simmons* v. *Oliver et al.*, 43 N. W. Rep. 561 (Wis.).

TRUSTS—VENDOR OF LAND—DOWER.—Complainant was in possession of land under a contract to convey. After the contract was made the vendor married. He died intestate, and the complainant brings his bill for specific performance. *Held*, that the intestate was constructive trustee at the time of his marriage, and his wife got no dower in the land. *Hunkins* v. *Hunkins*, 18 Atl. Rep. 655 (N. H.).

WILLS—TESTAMENTARY CAPACITY—BURDEN OF PROOF.—The jury were charged, in substance, that the burden of sustaining the will rested on him who asserted its validity, and unless he showed by the burden of proof that the testator was of sound mind and memory at the time of executing the will, they must find for the opponents. *Held*, error, as imposing a higher degree of proof on him who set up the will than the law required. *Pendlay et al.* v. *Eaton et al.*, 22 N. E. Rep. 853 (Ill.).

The decision of the court only went to the extent of saying, that, under the circumstances of the case, the charge was misleading. But from the general tenor of the opinion it would seem that the court thought, after evidence of a proper execution was introduced, the burden of proof for the whole case was on those opposing the will. That is, the court confound the "burden of proof" with the duty of "going forward with evidence." For the better view see *Sutten* v. *Sadler*, 3 C. B. N. S. 87–89; *Barnes* v. *Barnes*, 66 Me. 286; *Crowninshield* v. *Crowninshield*, 2 Gray, 524. See, however, *contra*, *McCoon* v. *Allen*, 17 Atl. Rep. 820 (N. J.), digested in 3 Harv. L. Rev. 188.

REVIEW.

THE LAW OF LIBEL, in its Relation to the Press. By Hugh Frazer, M.A., LL.M., etc. London: Reeves & Turner, 1889. pp. xix, 135.

This little book, a practical handbook on the law of newspaper libel is primarily designed, as the preface tells us, to meet the needs of those connected with the press. The law is stated in propositions numbered as articles,—a favorite arrangement among recent English legal writers and a few Americans,—while amplifications, limitations, and illustrations follow the articles in the shape of notes. The English authorities cited are numerous, the English statutes are carefully noticed throughout the text and conveniently collected in the appendix.

The work shows every mark of care; the articles are clear, condensed, and thorough. The notes and citations show learning and industry. The book cannot fail to be handy and serviceable, because it is brief, and yet apparently complete; and it will undoubtedly prove valuable to journalists, and so accomplish fully the design of the author.

L. F. H.